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12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN JOSE DIVISION

15 LEE DARNELL WATSON,

16 Plaintiff,

17 v.

18 CITY OF SAN JOSE, a government entity,
19 et al.

20 Defendants.

Case Number: 15-cv-04054-NC

**DEFENDANTS' ANSWER TO
PLAINTIFF'S FIRST AMENDED
COMPLAINT AND DEMAND FOR
JURY TRIAL**

21 Defendants, CITY OF SAN JOSE, MATTHEW BRACKETT, RYAN HANSEN,
22 RONALD HUGHES (erroneously named as a Defendant twice), CHRISTOPHER HEINRICH,
23 MICHAEL PANIGHETTI, SGT. JOSEPH STEWART, JONATHAN BAKER, DANIEL P.
24 GUERRA, GERARDO SILVA and PAUL JOSEPH (hereinafter "Defendants"), respond to
25 Plaintiff LEE DARNELL WATSON's (hereinafter "Plaintiff") First Amended Complaint under
26 the Civil Rights Act, Title 42 U.S.C. section 1983 on file herein, as follows:

27 1. In response to Paragraph 1 of Plaintiff's First Amended Complaint, Defendants
28 acknowledge that Plaintiff has filed this civil action seeking damages for alleged illegal and
unconstitutional conduct, but deny that any defendant engaged in any illegal or
unconstitutional conduct.

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1 2. In response to the allegations contained in Paragraph 2 of said Complaint,
2 Defendants do not have sufficient information and belief to respond to said allegations and so
3 deny said allegations.

4 3. In response to the allegations contained in Paragraph 3 of said Complaint,
5 Defendants admit that Officer Matthew Brackett is a police officer and employee of the City of
6 San Jose acting in the course and scope of his duties at all relevant times. The remainder of
7 the Paragraph is an inappropriate, vague and ambiguous legal conclusion and on that
8 ground Defendants deny said allegations.

9 4. In response to the allegations contained in Paragraph 4 of said Complaint,
10 Defendants admit that Officer Ryan Hansen is a police officer and employee of the City of
11 San Jose acting in the course and scope of his duties at all relevant times. The remainder of
12 the Paragraph is an inappropriate, vague and ambiguous legal conclusion and on that
13 ground Defendants deny said allegations.

14 5. In response to the allegations contained in Paragraph 5 of said Complaint,
15 Defendants admit that Officer Ronald Hughes is a police officer and employee of the City of
16 San Jose acting in the course and scope of his duties at all relevant times. The remainder of
17 the Paragraph is an inappropriate, vague and ambiguous legal conclusion and on that
18 ground Defendants deny said allegations.

19 6. In response to the allegations contained in Paragraph 6 of said Complaint,
20 Defendants admit that Officer Christopher Heinrich is a police officer and employee of the
21 City of San Jose acting in the course and scope of his duties at all relevant times. The
22 remainder of the Paragraph is an inappropriate, vague and ambiguous legal conclusion and
23 on that ground Defendants deny said allegations.

24 7. In response to the allegations contained in Paragraph 7 of said Complaint,
25 Defendants admit that Officer Michael Panighetti is a police officer and employee of the City
26 of San Jose acting in the course and scope of his duties at all relevant times. The remainder
27 of the Paragraph is an inappropriate, vague and ambiguous legal conclusion and on that
28 ground Defendants deny said allegations.

1 8. In response to the allegations contained in Paragraph 8 of said Complaint,
2 Defendants admit that Sergeant Joseph Stewart is a police officer and employee of the City
3 of San Jose acting in the course and scope of his duties at all relevant times. The remainder
4 of the Paragraph is an inappropriate, vague and ambiguous legal conclusion and on that
5 ground Defendants deny said allegations.

6 9. In response to the allegations contained in Paragraph 9 of said Complaint,
7 Defendants admit that Officer Jonathan Baker is a police officer and employee of the City of
8 San Jose acting in the course and scope of his duties at all relevant times. The remainder of
9 the Paragraph is an inappropriate, vague and ambiguous legal conclusion and on that
10 ground Defendants deny said allegations.

11 10. In response to the allegations contained in Paragraph 10 of said Complaint,
12 Defendants admit that Officer Daniel P. Guerra is a police officer and employee of the City of
13 San Jose acting in the course and scope of his duties at all relevant times. The remainder of
14 the Paragraph is an inappropriate, vague and ambiguous legal conclusion and on that
15 ground Defendants deny said allegations.

16 11. In response to the allegations contained in Paragraph 11 of said Complaint,
17 Defendants admit that Officer Ronald Hughes is a police officer and employee of the City of
18 San Jose acting in the course and scope of his duties at all relevant times. The remainder of
19 the Paragraph is duplicative of Paragraph 5 above, and is an inappropriate, vague and
20 ambiguous legal conclusion and on those grounds Defendants deny said allegations.

21 12. In response to the allegations contained in Paragraph 12 of said Complaint,
22 Defendants admit that Officer Gerardo Silva is a police officer and employee of the City of
23 San Jose acting in the course and scope of his duties at all relevant times. The remainder of
24 the Paragraph is an inappropriate, vague and ambiguous legal conclusion and on that
25 ground Defendants deny said allegations.

26 13. In response to the allegations contained in Paragraph 13 of said Complaint,
27 Defendants admit that Sergeant Paul Joseph is a police officer and employee of the City of
28 San Jose acting in the course and scope of his duties at all relevant times. The remainder of

1 the Paragraph is an inappropriate, vague and ambiguous legal conclusion and on that
2 ground Defendants deny said allegations.

3 14. In response to the allegations contained in Paragraph 14 of said Complaint,
4 Defendants acknowledge that Plaintiff references the Doe pleading concept of using
5 fictitious names for purposes of future pleading, but deny that said Doe pleading is
6 available in this Court. Defendants admit the remainder of said allegations.

7 15. In response to the allegations contained in Paragraph 15 of said Complaint,
8 Defendants neither admit nor deny the allegations.

9 16. In response to the allegations contained in Paragraph 16 of said Complaint,
10 Defendants acknowledge that Plaintiff references the Doe pleading concept of using
11 fictitious names for purposes of future pleading, but deny that said Doe pleading is
12 available in this Court.

13 17. In response to the allegations contained in Paragraph 17 of said Complaint,
14 Defendants object that the language is vague, ambiguous and an incomplete legal
15 conclusion and, for those reasons, Defendants deny each and every allegation contained
16 therein.

17 18. In response to the allegations contained in Paragraph 18 of said Complaint,
18 Defendants acknowledge that Plaintiff references the Doe pleading concept of using fictitious
19 names for purposes of future pleading, but deny that said Doe pleading is available in this
20 Court.

21 19. In response to the allegations contained in Paragraph 19 of said Complaint,
22 Defendants acknowledge that Plaintiff references the Doe pleading concept of using fictitious
23 names for purposes of future pleading, but deny that said Doe pleading is available in this
24 Court.

25 JURISDICTION AND VENUE

26 20. In response to the allegations contained in Paragraph 20 of said Complaint,
27 Defendants do not contest jurisdiction at this time.

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21. In response to the allegations contained in Paragraph 21 of said Complaint, Defendants do not contest venue at this time.

FACTS COMMON TO ALL CLAIMS FOR RELIEF

22. In response to the allegations contained in Paragraph 22 of said Complaint, Defendants object as noted in prior responses and hereby incorporate Paragraphs 1 through 21 from this Answer.

23. In response to the allegations contained in Paragraph 23 of said Complaint, Defendants are without information or belief as to the truth of said allegations and on that basis deny the allegations.

24. In response to the allegations contained in Paragraph 24 of said Complaint, Defendants deny the allegations contained therein.

25. In response to the allegations contained in Paragraph 25 of said Complaint, Defendants deny the allegations contained therein.

26. In response to the allegations contained in Paragraph 26 of said Complaint, Defendants deny the allegations contained therein.

27. In response to the allegations contained in Paragraph 27 of said Complaint, Defendants deny the allegations contained therein.

28. In response to the allegations contained in Paragraph 28 of said Complaint, Defendants deny such allegations.

29. In response to the allegations contained in Paragraph 29 of said Complaint, Defendants deny the allegations contained therein.

30. In response to the allegations contained in Paragraph 30 of said Complaint, Defendants deny the allegations contained therein.

31. In response to the allegations contained in Paragraph 31 of said Complaint, Defendants deny the allegations contained therein.

32. In response to the allegations contained in Paragraph 32 of said Complaint, Defendants deny the allegations contained therein.

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33. In response to the allegations contained in Paragraph 33 of said Complaint, Defendants object that the language is vague, ambiguous and an incomplete legal conclusion. Defendants are further without information or belief as to the truth of said allegations, and for those reasons, Defendants deny each and every allegation contained therein.

34. In response to the allegations contained in Paragraph 34 of said Complaint, Defendants object that the language is vague, ambiguous and an incomplete legal conclusion. Defendants are further without information or belief as to the truth of said allegations or the nature and extent of plaintiff's injuries, if any, and for those reasons, Defendants deny each and every allegation contained therein.

35. In response to the allegations contained in Paragraph 35 of said Complaint, Defendants deny the allegations contained therein.

36. In response to the allegations contained in Paragraph 36 of said Complaint, Defendants are without information or belief as to the truth of said allegations or the nature and extent of plaintiff's injuries, if any. On that basis they deny the allegations.

37. In response to the allegations contained in Paragraph 37 of said Complaint, Defendants deny the allegations contained therein.

FIRST CLAIM FOR RELIEF

Unreasonable Search and Seizure-Excessive Force (42 U.S.C. § 1983) (Against All Defendants)

38. In response to the allegations contained in Paragraph 38 of said Complaint, Defendants object as noted in prior responses and hereby incorporate Paragraphs 1 through 37 from this Answer.

39. In response to the allegations contained in Paragraph 39 of said Complaint, Defendants object that the language contained therein is an inappropriate, simplistic, vague, ambiguous and incomplete legal conclusion and, based on this, Defendants deny each and every allegation contained therein.

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1 50. In response to the allegations contained in Paragraph 50 of said Complaint,
2 Defendants deny the allegations contained therein.

3 **THIRD CLAIM OF RELIEF**
4 **State Claim – Battery**
5 **(Against Defendants and DOES 9 through 10, inclusive)**

6 51. In response to the allegations contained in Paragraph 51 of said Complaint,
7 Defendants object as noted in prior responses and hereby incorporate Paragraphs 1 through
8 50 from this Answer.

9 52. In response to the allegations contained in Paragraph 52 of said Complaint,
10 Defendants deny the allegations contained therein.

11 53. In response to the allegations contained in Paragraph 53 of said Complaint,
12 Defendants object that the language is a vague and ambiguous statement of the law and an
13 incomplete legal conclusion and, for those reasons, Defendants deny each and every
14 allegation contained therein.

15 54. In response to the allegations contained in Paragraph 54 of said Complaint,
16 Defendants are without information or belief as to the truth of said allegations or the nature
17 and extent of plaintiff's injuries, if any. On that basis they deny the allegations.

18 55. In response to the allegations contained in Paragraph 55 of said Complaint,
19 Defendants object that the language is a vague and ambiguous statement of the law and an
20 incomplete legal conclusion and, for those reasons, Defendants deny each and every
21 allegation contained therein.

22 **FOURTH CLAIM OF RELIEF**
23 **(Intentional Infliction of Emotional Distress)**
24 **(Against all Defendants)**

25 56. In response to the allegations contained in Paragraph 56 of said Complaint,
26 Defendants object as noted in prior responses and hereby incorporate Paragraphs 1 through
27 55 from this Answer.

28 57. In response to the allegations contained in Paragraph 57 of said Complaint,
Defendants object that the language is a vague and ambiguous statement of the law and an

1 incomplete legal conclusion and, for those reasons, Defendants deny each and every
2 allegation contained therein.

3 58. In response to the allegations contained in Paragraph 58 of said Complaint,
4 Defendants deny the allegations contained therein.

5 59. In response to the allegations contained in Paragraph 59 of said Complaint,
6 Defendants deny the allegations contained therein.

7 60. In response to the allegations contained in Paragraph 60 of said Complaint,
8 Defendants object that the language is a vague and ambiguous statement of the law and an
9 incomplete legal conclusion and, for those reasons, Defendants deny each and every
10 allegation contained therein.

11 61. In response to the allegations contained in Paragraph 61 of said Complaint,
12 Defendants deny the allegations contained therein.

13 62. In response to the allegations contained in Paragraph 62 of said Complaint,
14 Defendants deny the allegations contained therein.

15 **FIFTH CLAIM OF RELIEF**

16 **(Negligence)**
17 **(Against all Defendants)**

18 63. In response to the allegations contained in Paragraph 63 of said Complaint,
19 Defendants object as noted in prior responses and hereby incorporate Paragraphs 1 through
20 62 from this Answer.

21 64. In response to the allegations contained in Paragraph 64 of said Complaint,
22 Defendants deny the allegations contained therein.

23 65. In response to the allegations contained in Paragraph 65 of said Complaint,
24 Defendants are without information or belief as to the truth of said allegations or the nature
25 and extent of plaintiff's damages, if any. On that basis they deny the allegations.

26 66. In response to the allegations contained in Paragraph 66 of said Complaint,
27 Defendants are without information or belief as to the truth of said allegations or the nature
28 and extent of plaintiff's damages, if any. On that basis they deny the allegations.

SIXTH CLAIM OF RELIEF
(Negligent Hiring, Training and Retention)
(Against Defendant CITY and Does 9 through 10, inclusive)

67. In response to the allegations contained in Paragraph 67 of said Complaint, Defendants object as noted in prior responses and hereby incorporate Paragraphs 1 through 66 from this Answer.

68. In response to the allegations contained in Paragraph 68 of said Complaint, Defendants object that the language is a vague and ambiguous statement of the law and an incomplete legal conclusion and, for those reasons, Defendants deny each and every allegation contained therein.

69. In response to the allegations contained in Paragraph 69, including subparts a through h of said Complaint, Defendants deny the allegations contained therein.

70. In response to the allegations contained in Paragraph 70 of said Complaint, Defendants are without information or belief as to the truth of said allegations or the nature and extent of plaintiff's damages, if any. On that basis they deny the allegations.

71. In response to the allegations contained in Paragraph 71 of said Complaint, Defendants are without information or belief as to the truth of said allegations or the nature and extent of plaintiff's injuries, if any. On that basis they deny the allegations.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

As and for a first affirmative defense, Defendants allege that the First Amended Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

As and for a second affirmative defense, Defendants allege that any harm Plaintiff suffered was the result of a negligent or otherwise wrongful act and/or conduct of persons other than this answering Defendants and that the conduct of other persons other than this Defendants was the sole and proximate cause of the injuries and damages alleged by Plaintiff.

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THIRD AFFIRMATIVE DEFENSE

As and for a third affirmative defense, Defendants allege that all actions taken were undertaken in good faith and with reasonable belief that the actions were valid, necessary, constitutionally proper, and objectively reasonable for a police officer in the same circumstances, entitling Defendants, and each of them, to qualified immunity.

FOURTH AFFIRMATIVE DEFENSE

As and for a fourth affirmative defense, Defendants allege that the arrest of Plaintiff was performed reasonably and pursuant to the laws of California with respect to the actions of police officers.

FIFTH AFFIRMATIVE DEFENSE

As and for a fifth affirmative defense, Defendants allege that their conduct was privileged and not wrongful since they were acting in the defense of others.

SIXTH AFFIRMATIVE DEFENSE

As and for a six affirmative defense, Defendants allege that Plaintiff's First Amended Complaint is barred by the applicable statutes of limitation.

SEVENTH AFFIRMATIVE DEFENSE

As and for a seventh affirmative defense, Defendants allege that their actions towards Plaintiff were the result of his negligence and/or criminal conduct and that said actions of Plaintiff were the sole and proximate cause of their actions and any damages alleged by Plaintiff in this case.

EIGHTH AFFIRMATIVE DEFENSE

As and for an eighth affirmative defense, Defendants allege that Plaintiff has failed to mitigate his damages, if any.

NINTH AFFIRMATIVE DEFENSE

As and for a ninth affirmative defense, Defendants allege that the treatment of Plaintiff was lawful and justified under the facts of the case.

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1 **TENTH AFFIRMATIVE DEFENSE**

2 As and for an tenth affirmative defense, these answering Defendants allege that the
3 complained of conduct does not and cannot rise to the level of deliberate indifference to
4 Plaintiffs' rights or amount to conduct that shocks the conscience of the Court under the facts
5 and circumstances pled.

6 **ELEVENTH AFFIRMATIVE DEFENSE**

7 As and for an eleventh affirmative defense, these answering Defendants allege that
8 any damages or injuries suffered by Plaintiff are barred, in whole or in part, by the
9 equitable doctrines of unclean hands, laches, waiver and/or estoppel.

10 **TWELFTH AFFIRMATIVE DEFENSE**

11 As and for a twelfth affirmative defense, Defendants allege that Defendant CITY OF
12 SAN JOSE is immune from a claim of exemplary or punitive damages by virtue of
13 Government Code § 818.

14 **THIRTEENTH AFFIRMATIVE DEFENSE**

15 As and for a thirteenth affirmative defense, Defendants allege that they are immune
16 from the state law causes of action pursuant to Government Code §§800-1000, including
17 but not limited to §§820.2 820.4, 820.8, 821.6, 821.8, and 822.2.

18 **FOURTEENTH AFFIRMATIVE DEFENSE**

19 As and for a fourteenth affirmative defense, Defendants allege that Plaintiff's
20 Complaint is barred in that Plaintiff failed to comply with the claims filing provision of
21 Government Code §900, *et. seq.*

22 **FIFTEENTH AFFIRMATIVE DEFENSE**

23 As and for a fifteenth affirmative defense, Defendants allege that any damages or
24 injuries suffered by Plaintiff were occasioned by his own wrongful actions.

25 **SIXTEENTH AFFIRMATIVE DEFENSE**

26 As and for a sixteenth affirmative defense, Defendants allege that third parties were
27 careless and negligent in and about the matters referred to in said Complaint, and further
28 that these third parties failed to exercise ordinary or any care regarding matters referred to

1 in the Complaint and such carelessness and negligence on the part of these third parties
2 proximately caused and contributed to the damage, detriment or injury sustained by
3 Plaintiff, if any there was, and that Plaintiff's recovery from Defendants, if any there is,
4 should therefore either be barred or reduced to the extent of the third party's negligence.

5 WHEREFORE, these answering Defendants pray:

- 6 1. That Plaintiff take nothing by his First Amended Complaint;
- 7 2. That Plaintiff's First Amended Complaint be dismissed with prejudice;
- 8 3. That Defendants be awarded the costs of suit, including attorney's fees
9 incurred herein; and
- 10 4. For such other and further relief as the Court deems proper.

11 **JURY TRIAL DEMAND**

12 Defendants hereby demand a jury.

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14 Respectfully submitted,

15 Dated: January 27, 2016

RICHARD DOYLE, City Attorney

16
17 By: /s/ Shannon Smyth-Mendoza
SHANNON SMYTH-MENDOZA
18 Sr. Deputy City Attorney

19 Attorneys for Defendants
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